



## **Mediate Not Litigate**

### **Why Mediate?**

Mediation is really the only remedy in a building dispute.

The factual and legal complexities which often surround a commercial building dispute render it essential for parties to first consider mediation.

I recall some 25 years ago acting as a junior lawyer for a party to a building dispute in the Townsville Magistrates Court. My opponent and I had each briefed a barrister who had some experience in building law. I had very little experience at the time.

The Magistrate was clearly not interested in hearing a two week matter which involved claims and counterclaims for damages based upon breach of contract, allegations of termination of the contract, unpaid monies including disputed variations and, of course, a raft of alleged defective works.

There was very little written evidence available. The allegations made by both parties would need to be proved by oral evidence given by many witnesses.

The cost of litigating each parties' claims would eventually exceed the amount of the claims being sought by each party.

Does this scenario sound familiar to you?

However the result of the dispute was very pleasing for the parties. Having sat through a morning of legal argument before a disinterested Magistrate the case was stood down to enable discussions to take place between the parties.

The two warring parties walked and talked together. After half an hour or so they had settled the matter without their lawyers!

Both parties had saved themselves tens of thousands of dollars in legal costs and avoided the stress and anxiety associated with an uncertain outcome.

They had also achieved finality and certainty of outcome by taking control of the dispute.

They may even have restored a once fractured business relationship.

Should this scenario sound familiar to you?

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